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PDC CASE NO.: 04-663

FINAL ORDER IMPOSING FINE

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1 After due consideration of the above documents and testimony, and oral argument
2 by counsel for Staff and the Respondent, by a 4-0 vote, the Commission accepted the
3 Stipulation, made the following findings and enters the following order.

4 **FINDINGS AND CONCLUSIONS**

5 Based upon the stipulated facts and testimony, the Commission enters the following
6 findings and conclusions:
7

8 The Commission finds and concludes the Respondent used the public facilities of
9 the public schools in violation of RCW 42.17.130.

10 **ORDER**

11 The Commission orders as follows:

- 12 1. That the Stipulation of Facts is accepted and is incorporated by reference in this
13 order; and,
14 2. That a total civil penalty of \$500 is assessed against the Respondent, with \$450
15 suspended if there is no future violation of RCW 42.17 for two years from the date
16 of this Order.
17

18 **RECONSIDERATION OF FINAL ORDER - COMMISSION**

19 Any party may ask the Commission to reconsider this final order. Parties must
20 place their requests for reconsideration in writing, include the specific grounds or reasons
21 for the request, and deliver the request to the Public Disclosure Commission Office within
22 **TEN (10) days** of the date that the Commission serves this order upon the party. Pursuant
23 to RCW 34.05.470(3), the Public Disclosure Commission is deemed to have denied the
24 petition for reconsideration if, within twenty (20) days from the date the petition is filed, the
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1 Commission does not either dispose of the petition or serve the parties with written notice
2 specifying the date by which it will act on the petition. Pursuant to RCW 34.05.470(5), the
3 Respondent is not required to ask the Public Disclosure Commission to reconsider the final
4 order before seeking judicial review by a superior court.
5

6 **FURTHER APPEAL RIGHTS – SUPERIOR COURT**

7 Pursuant to RCW 42.17.395(5), a **final order** issued by the Public Disclosure
8 Commission is subject to judicial review under the Administrative Procedures Act, chapter
9 34.05 RCW. The procedures are provided in RCW 34.05.510 - .598. Pursuant to RCW
10 34.05.542(2), a petition for judicial review must be filed with the superior court in Thurston
11 County or the petitioner's county of residence or principal place of business. The petition
12 for judicial review must be served on the Public Disclosure Commission and any other
13 parties within **30 days** of the date that the Public Disclosure Commission serves this final
14 order on the parties.
15

16 If reconsideration is properly sought, the petition for judicial review must be served
17 on the Public Disclosure Commission and any other parties within thirty (30) days after the
18 Commission acts on the petition for reconsideration.
19

20 **ENFORCEMENT OF FINAL ORDERS**

21 The Commission will seek to enforce this final order in superior court under RCW
22 42.17.395-397, and recover legal costs and attorney's fees, if the penalty remains unpaid
23 and no petition for judicial review has been filed under chapter 34.05 RCW. This action
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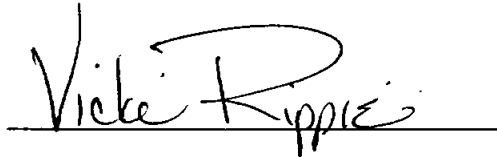
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1 will be taken without further order by the Commission.

2 DATED THIS ^{4th} 17 day of February 2005.

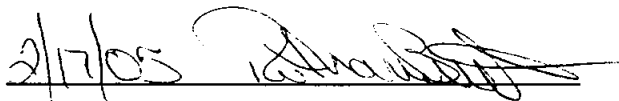
3 FOR THE COMMISSION:

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7 VICKI RIPPIE, Executive Director

8 Attachment: Stipulation of Facts Dated January 25, 2005

9 MAILING DATE OF THIS ORDER:

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12 Copies mailed to:

13 Harriet Strasberg, Counsel for Respondent

14 Linda Dalton, Senior Assistant Attorney General

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7 **BEFORE THE PUBLIC DISCLOSURE COMMISSION**
8 **OF THE STATE OF WASHINGTON**

9 In the Matter of Enforcement
10 Action Against

NO: 04-663

STIPULATION AS TO FACTS

11 Ed Herbert, Seattle School
12 District No. 1

Respondent.

13 COMES NOW the parties hereto, the Public Disclosure Commission
14 Staff, by and through its attorneys of record, ROB McKENNA, Attorney
15 General and LINDA A. DALTON, Senior Assistant Attorney General, and the
16 Respondent, ED HERBERT, appearing through his attorney, HARRIET
17 STRASBERG, and submits this Stipulation as to Facts in this matter.

18 The parties hereto stipulate to the following facts contained in the
19 Notice of Administrative Charges submitted by the Public Disclosure
20 Commission Staff in the above-entitled matter:

21 1. During the 2003-04 school year, the Respondent, Ed Herbert, was a
22 teacher at Ballard High School in the Seattle School District No. 1. He
23 has been a teacher for 16 years. The 2003-04 school year was his fourth
24 year at Ballard High School.

25 2. During the 2003-04 school year, Mr. Herbert was a building
26 representative for the Seattle Education Association (SEA) at Ballard High

STIPULATION AS
TO FACTS

1 School. He had been a building representative for one year prior to the
2 2003-04 school year. The SEA is a local affiliate of the Washington
3 Education Association.

4 3. On June 2, 2004, Mr. Herbert used his school email account and
5 computer to forward an email from Maggie Crain, Associate Executive
6 Director of the SEA, to the 141 employees of Ballard High School, most of
7 whom were members of the SEA.

8 4. Mr. Herbert's introduction to Ms. Crain's email stated as follows:

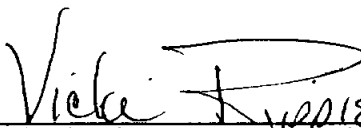
9 Anyone who still has a petition for Referendum 55 or I - 884 . . .
10 Please put them in Dennis Nusbaum or my mailbox. They will be
11 picked up by SEA folks today. Thanks!

12 The email distributed is attached as "A" to this Stipulation.

13 5. At the time Mr. Herbert distributed the email, he was unaware of any
14 prohibition on using public facilities to support or oppose a ballot
15 proposition.

16 6. Mr. Herbert received completed petitions in his school district mailbox.

17 Stipulated to and dated this 25th day of January, 2005.

18 
19 Vicki Rippie, Executive Director
20 Public Disclosure Commission

21 
22 HARRIET STRASBERG, WSBA #15890
23 Attorney for Respondent

24 
25 ED HERBERT
26